



SEXUAL VIOLENCE RESULTS FROM ARMS CONFLICT

Mrs. Arti Ashokrao Dive

I/c Principal, B. K. Mercantile Bank Law College, Palanpur, Gujarat, India.

ABSTRACT

Some "special security" legislation, such as the Armed Forces Special Power Act (AFSPA), has contributed to fostering a climate of impunity among law enforcement officials.. Women are commonly portrayed as passive victims in combat films, but this is simply not true. Women as perpetrators and victims of violence are denied agency and the power to speak up as system participants. Sexual assault is a common occurrence during combat, but it frequently goes undetected. There is a socially constructed idea of women as bearers of the honour of their families and societies, which has resulted in a culture of quiet in the face of domestic violence. When it comes to addressing a wide range of conflicts, women's issues are typically seen as incidental. As a result, their concerns and desires are pushed to the side. The hostile opposition views women as emblems of the family's dignity, which makes them targets of double ostracism and attack in times of war. Because of procedural issues and the social concept of "honour," women who have been sexually assaulted have been denied justice. Using the growing arsenal of international mechanisms to safeguard and develop women's human rights in crisis situations, this research will examine the numerous facets human rights abuses and discrimination suffered by women in the north-east. During times of armed conflict, India has consistently failed to protect women's human rights and fulfil important human rights obligations.

KEYWORDS: AFSPA , Sexual Violence, Human Rights.

INTRODUCTION:

Since the British left India, separatist insurgencies, public agitations, ethnic riots, and harsh official responses have ravaged the northeast, resulting in ongoing violence in the region. Since independence, there has been a lot of violence in the region, not just between armed opposition groups and government officials, but also between several ethnic militias. As a result, the Indian central government and governors of the northeastern states have despatched a massive force to battle the insurgency, which includes a regular army, federal paramilitary forces, and state armed police. Due to the uncontrolled use of terror by both state military and non-state organisations, the region's inevitable militarization and clandestine activities have resulted in major human rights violations.

As a result, extrajudicial killings, ethnic cleansing, rape, and different forms of torture, large-scale massacres, and massive displacement have occurred in the region. Women and children are the most severely affected members of society during and after armed wars. In comparison to men, conflict and militarism are more prone to create settings that oppress and damage women disproportionately. Surprisingly, during and after armed conflicts, gender imbalances are rarely adequately addressed by human rights campaigns and official protection institutions. Women's rights are sometimes disregarded, even in times of extreme need. According to the study, women's pain and the effects of conflict on their lives are routinely overlooked. Because of their social status, women are affected differently by armed conflict than men.

The difficulties they experience as a result of conflict are mostly ignored. As a result, it is critical to draw attention to these issues and raise awareness of women's rights in such situations, as well as current options for changing their situation.

DEFINING ARMED CONFLICT:

In many ways, foreign and domestic armed conflict are not the same, but their impact on women's life is comparable. To do this, it is necessary to use the term "internal armed conflicts" broadly when discussing armed conflict in order to cover situations that are not technically recognised as such by individual nations but could be classified as such based on their characteristics. In many cases of internal armed conflict, governments, on the other hand, refuse to acknowledge the existence of a war situation in order to avoid legitimising armed groups. This is especially true in Africa. "Prolonged armed engagements between state military forces and forces of one or more armed groups, or between such organisations that have established on the territory of a State," according to the International Committee of the Red Cross (ICRC). In an armed confrontation, a certain level of intensity is required, as well as a minimum level of organisation from all parties." The use of this expression in the context of armed clashes in India may be permitted if a minimum threshold has been established. Indian authorities do not categorise any of the country's conflict situations as "internal armed conflict," despite the fact that a huge number of armed organisations have been fighting in various parts of the country for decades.

Since independence, India has had a number of outbreaks of armed warfare. On the other hand, the Government of India (GOI) denies that armed conflict exists on its soil. In 2006, India was asked to "inform the Committee on how Security

Council Resolution 1325 is being implemented in India and how gender perspectives are being mainstreamed in military operations in "disturbed areas and conflict areas" as part of a pre-session question by the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Indian government stated, "The Security Council Resolution 1325 has been communicated to all relevant Ministries in the Administration." The United Nations Security Council Resolution 1325 on Women in Armed Conflict does not apply to India because it lacks any scenarios that qualify as "armed conflict." It has a long history of supporting human rights in the country when carrying out its commitments, and is especially sensitive to the rights of women and children. The following actions are carried out on a regular basis in 'disturbed communities' in order to mainstream gender notions... " The Indian government has consistently rejected the existence of armed conflict in the country and has refused to accept responsibility for the consequences of various violent conflict scenarios that have occurred there. Some areas in India have been labelled as "distributed areas" and "insurgency-infected areas," respectively. Jammu and Kashmir, the north-eastern states, and the rest of the country's central and eastern regions, all of which are home to Maoist terrorists, are currently divided into three battle zones. Since 1989, a number of armed groups in Jammu and Kashmir have battled for independence, merger with Pakistan, or even greater autonomy from the Indian government. During this time, it is estimated that between 47,000 and 77,000 people died as a result of the violence. Insurgent organisations from India's north-eastern states, particularly Assam, Manipur, Nagaland, and Mizoram, have wreaked havoc on the provinces since 1979, murdering more than 45,000 people. At least 6000 people have died as a result of Maoist insurgents' attempts to seize power in eastern and central India.

Despite the worrisome number of insurgents and the military's vast powers in these areas, India has refrained from categorising the affected areas as armed conflict areas, owing to special legislation enacted to aid in the war against insurgents, such as the Armed Forces Act (Special Powers Act, 1958). As a result of these specific Acts, India has been unable to recognise the impacted communities as being protected under the 1949 Geneva Conventions. Despite the fact that the term "armed war" is commonly used in other nations, the Indian government has never utilised it to refer to the country's armed conflict situation on a global scale. In India, particularly in the north-east, conflicts are extremely complex, comprising movements for more autonomy, the right to self-determination or secession, ethnic identity-based conflicts, communal (caste and religious) conflicts, and 'ideological' conflicts. When a crisis situation arises, armed forces, government paramilitary groups, and armed rebel organisations are all present.

IN ARMED CONFLICT, SEXUAL VIOLENCE:

Acts of sexual violence that employ force, threat of force, or coercion, or that take advantage of a person's inability to give true permission due to a coercive environment or incapacity to do so, are classified as sexual violence.

The International Criminal Tribunal for Rwanda (ICTR) Prosecution Chamber determined during Akayesu's trial that sexual violence is defined as "a sexual act done on a person under coercive conditions."

In some circumstances, sexual violence in armed conflict, particularly rape, is

referred to as a "weapon of war" and/or a "tactic of war."

Sexual violence has always been and will continue to be a taboo topic to be avoided at all costs. However, during the last two decades, researchers have obtained a better grasp of the practice's negative effects on both individuals and society. The hardships of men, women, boys and girls, as well as the entire community, as a result of sexual assault, have been brought to the forefront as a result of the two historic conflicts in the former Yugoslavia, as well as the Rwandan genocide.

IMPACT OF ARMED CONFLICT UPON WOMEN:

Armed conflicts exacerbate women's marginalisation by strengthening patriarchal attitudes in the military and militant groups. On the one hand, state agencies exploit women, while on the other, no arrangements are made to ensure their job security or to cope with the increasing fiscal load and social and psychological stress. Furthermore, internal pressures on women to maintain their traditional and ethnic identities limit or hinder the research of gender-biased customary laws and practises. 30 Fear of sexual violence and its consequences can cause women to withdraw from economic activity where they have the choice, and children, particularly girls, may be pulled out of school due to their mothers' fears of kidnapping or sexual violence, resulting in the disadvantage and discrimination that CEDAW requires states to avoid.

The loss of a spouse or son due to a violent death, injury, or conflict has a tremendous psychological impact on women, but it also forces them to take full responsibility for their families and dependents. These women in the north-east frequently relocate to cities, where they are equally vulnerable to exploitation, and studies suggest that prostitution and human trafficking rise during periods of armed conflict, resulting in even worse physical and mental health consequences for women. 33 As has been clearly demonstrated on an international basis, conflict-induced violence is no longer limited to physical acts, but rather a cascade of negative repercussions that lock women in a cycle of subordination and poverty. Another major consequence of armed conflict is the displacement that is taking place in the country. Hundreds of people are on display as a result of the region's ongoing tragic conflicts, mainly in Assam. There is currently no law ensuring the rights of internally displaced persons during times of conflict. Women experienced a range of prejudices in these conditions. Women who have spent lengthy periods of time in camps, perhaps decades, are particularly vulnerable to human trafficking and unsafe migration. There is no policy on displacement in India, and no programmes or approaches are specifically intended for those forced to evacuate their homes as a result of military combat.

Women are underrepresented in conflict resolution and post-conflict reconstruction, despite the catastrophic effects of armed conflict on women. Women are often depicted as victims or healers, but they are rarely given the opportunity to make judgments. While victims and survivors must be given full attention, healing and rehabilitation must take place in an empowered and equal environment. Women define peace as a social environment free of all forms of violence, implying the peaceful coexistence of all people with basic human dignity. Peace begins at home, then travels to the state, and lastly to the entire world. In north-east India, women's participation in decision-making bodies, whether traditional or modern democratic institutions such as legislative assemblies, is exceedingly low, which has a significant impact on the dispute resolution process. The lack of political will among members of the Indian Parliament to enact the Women's Reservation Bill, on the other hand, resulted in a chain reaction of women's political involvement being disallowed at the state assembly level. In addition, the lack of women in these organisations has led to "development" that is neither "people-centered" nor "people-friendly." As a result, the battle has gotten worse.

INDIA'S SEXUAL VIOLENCE AS A RESULT OF CONFLICT:

Sexual assault has grown in both wartime and non-war scenarios, according to a 2019 study by the Armed Conflict Location and Event Data project (Acled), with women and girls being the most common victims. According to the survey, regional political militias and state military are the most common perpetrators of public and political sexual assaults. In 2018 and 2019, India was one of the top countries for women's vulnerability to conflict-related sexual violence.

The Armed Forces (Special Powers) Act (AFSPA), which protects the Indian Army from prosecution for human rights abuses, has proven to be a major hurdle in India's efforts to eliminate sexual assault in combat.

In Kunan Poshpora's neighbourhood, a rash of rapes has been reported.

On February 23, 1991, the Indian Army's Fourth Raj Rifles carried out a search and interrogation operation in the Kashmiri village of Kunan Poshpora. Under the guise of a search operation, men and women in the village were separated. Over the next few hours, soldiers raped at least 23 women in their own houses, while males were forcibly removed from their homes and brought to military barracks. The Army has consistently disputed that mass rapes took place over the years.

Sexual Assault and Murder in Custody by Thangjam Manorama

Thangjam Manorama's body was recovered near her home in Laiphorak Maring,

Manipur, on July 11, 2004, after she was kidnapped in the middle of the night by members of the Indian Army's 17th Assam Rifles regiment. She had been raped and assaulted, according to an autopsy. The army seized Manorama on suspicion of being a bomber and a member of the separatist People's Liberation Army (PLA). Manorama's family has always refuted the allegations.

Sexual violence against Adivasi women is common in Chattisgarh.

In at least five villages in Chhattisgarh, police sexually assaulted and raped many Adivasi women between 2015 and 2016. The National Human Rights Commission (NHRC) suggested that the Chhattisgarh government provide financial help to the victims after activists submitted a report, but no action was taken to prosecute the perpetrators. Nonetheless, in March 2016, reports of extensive sexual abuse in Bastar and Bijapur surfaced.

During rallies against the CAA and the NRC, there have been sexual attacks.

During anti-CAA and NRC protests, there was sexual violence on several occasions. At one protest, numerous women from Jamia Millia Islamia University were lathi-charged, with several of them having their genitals struck. Similar gendered assaults have also been reported at Aligarh Muslim University.

According to the United Nations, combating impunity for sexual assault is a "essential component of deterring and preventing such crimes." Furthermore, the majority of survivors of conflict-related sexual abuse are afraid to come out and share their stories because of cultural shame. Increased advocacy efforts, reduced stigma associated with sexual violence survivors, satisfying the needs and demands of survivors of conflict-related sexual violence, and establishing accountability systems could be the first steps toward eradicating sexual violence in conflict.

CURRENT SCENARIO:

Unfortunately, no progress has been made in the problem to this moment. The widespread use of rape as a lethal weapon was one of the most pervasive characteristics of contemporary conflict. In the 2000s, the Lord's Resistance Army among Uganda employed sexual molestation as a military technique to instil dread and worry in the people. In Sudan, rape and other forms of sexual assault have been used to dismantle family and community networks and drive people away from resource-rich areas, particularly by government troops.

CONCLUSION:

Armed violence has infiltrated the entire concept of "normal civilian life" in north-east India, resulting in a slew of violations against civilians, particularly women, perpetrated by both state and non-state actors. Military personnel have revoked the Criminal Procedure Code's and Supreme Court orders' bare-bones protections for female suspects in the majority of operations, whether cordon and search, combing arrests, searches, or interrogation, under the guise of the AFSPA. Torture, gang and collective rape, mutilation, and murder, among other forms of gendered and sexualized violence, were pervasive and not isolated in terms of ideology or history, highlighting the necessity for a comprehensive strategy that recognises violence as a process.

India utilises a narrow definition of armed conflict in order to evade international obligations. The AFSPA-covered conflict is a multi-faceted conflict involving state and non-state actors, as well as tribal and non-tribal peoples, over issues such as development, ideology, autonomy, and criminality, in which tens of thousands of people have perished violently. In this context, enhancing government accountability for the protection of women's human rights during times of war is vital. Governments who refuse to use the term "armed conflict" to describe continuing hostilities, the use of armaments by state or non-state actors, and the deployment of disproportionate state military force must be persuaded. Women are harmed by the conflict scenario, and the government is responsible for preserving and protecting the country's citizens' human rights.

Women from the northeast are dynamic, historically self-sufficient, opinionated, and bold. They have continued to congregate and march in reaction to a growing climate of harassment, assault, and humiliation directed at women. The government now has the responsibility of not just avoiding further militarization of progressive ideas, but also of promoting and enabling women's participation in governance and peacekeeping in conformity with emerging international norms. In order to apply internationally evolved standards and concepts to their local battlegrounds in a meaningful way, women in north-eastern India will surely want to grasp them. On the other side, discrimination and injustice are intrinsically tied to concerns about gender inequality and violence against women, which will bring the region into a new period of contribution and growth.

This study looked into the legal evolution of the concept of sexual violence in armed conflicts within the context of international humanitarian law. Sexual assault, in any form, is clearly prohibited by international humanitarian law. It instils a sense of respect for one's fellow human beings while also highlighting prohibition's historical relevance in the creation of international human rights law. This restriction applies to both international and non-international armed conflicts, according to traditional IHL rules. Sexual violence and comparable crimes are considered a "serious breach" of international humanitarian law, as

well as an act of "wilful infliction of great suffering or serious bodily or mental damage" in international armed conflicts. In light of this, the International Humanitarian Law considers sexual violence to be a state-sponsored war crime.

REFERENCES:

1. ICRC. How is the term "Armed Conflict" defined in International Humanitarian Law ? Opinion Paper, March 2008. Available at : <http://www.icrc.org/web/eng/siteeng.nsf/html/armed-conflict-article-170308/Sfile/Opinion-paper-armed-conflict.pdg>.
2. Ranvijay, Violent Conflict in India : Issues of Contention, January, 2010, available at : <http://www.monitor.upeace.org/innerpg.cfm?id=685> (last visited July, 30, 2016).
3. SAHRDC, India and CEDAW : Who's Afraid of Too Much Equality ? 24 August, 2007, available at : <http://www.hrdc.net/sahrdc>
4. For instance, cases of rape and forced prostitution in Liberia and Sierra Leone increased significantly following conflict in these states. Sec K. Taylor-Smith et al., 'Sexual Violence in Post-Conflict Liberia : Survivors and their care', *Tropical Medicine & International Health*, Vol. 17 (2012), pp. 1356-60.
5. South Asia Human Rights Documentation Centre, A Study in National Security tyranny, 1998, available at : <http://www.hrdc.net/sahrdc/resources/armedforces.htm>
6. PDHRE, *supra* note 10
7. <https://www.legalserviceindia.com/legal/article-2-sexual-violence-in-armed-conflicts-a-violation-of-international-humanitarian-law.html>
8. Saheli Women's Resource Centre (SWRC), Submission by Saheli Women's Resource Centre for the Repeal of AFSPA, 14 January 2005, available at : <http://npmhr.org/index.php?option=com-content&views=article&id=86:submission-by-Saheli-womens-resource-centre-for-the-repeal-of-afspa&catid=18:npmhr>.
9. CEDAW; Thirty-seventh session 15 January to 12 February, 2007. Responses to the list of issues and questions for consideration of the combined second and third periodic report of India.
10. Sumiran Preet Kaur, Conflict of Nowhere People, November, 2009, available at : <http://www.hardnewsmedia.com/2009/11/3351> (last visited June 2016).
11. <https://feminisminindia.com/2020/06/19/infographic-sexual-violence-in-conflict/>